

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOELLEN REVELLA ,

Docket No: 07 CIV 3692

Plaintiff,

NOTICE OF MOTION

-against-

(MDF, MJ)


KOHL'S DEPARTMENT STORES, INC.,

Defendant.
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PLEASE TAKE NOTICE that upon the annexed affidavit of STEVEN F. GOLDSTEIN, Esq., duly sworn to on the 22nd day of June 2007, the Memorandum of Law dated the 22nd day of June 2007, and the attached Exhibits, the undersigned will move this Court, before United States Magistrate Judge Mark D. Fox at the United States District Court, Southern District of New York located at 300 Quarropas Street, White Plains, New York 10601-4150 for an Order, pursuant to Rule 12(b)(1)(6) of the Federal Rules of Civil Procedure, granting to defendant KOHL'S DEPARTMENT STORE dismissing the plaintiff's complaint in its entirety and for such other and further relief as the Court may deem appropriate.

Dated: Carle Place, New York
June 22, 2007

STEVEN F. GOLDSTEIN, L.L.P.

By: 
STEVEN F. GOLDSTEIN (2076)

Attorneys for Defendant
KOHL'S DEPARTMENT STORES, INC.
One Old Country Road, Suite 318
Carle Place, New York 11514
(516) 873-0011

TO: JACOBOWITZ & GUBITS, LLP
Attorneys for Plaintiff
158 Orange Avenue, P.O. Box 367
Walden, New York 12586
(845) 778-2121

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOELLEN REVELLA ,

Docket No: 07 CIV 3692

Plaintiff,

AFFIRMATION IN SUPPORT

-against-

KOHL'S DEPARTMENT STORES, INC.,

Defendant.

-----X

STEVEN F. GOLDSTEIN, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. This affirmation is offered in support of the within motion seeking to dismiss the First, Third and Fourth causes of action of the plaintiff's complaint on the ground that they violate the applicable statute of limitations pursuant to F.R.C.P 12 (b)(1)(6)

PROCEDURAL HISTORY

2. The action was commenced in the Supreme Court, County of Orange by the purported service of the plaintiff's summons and complaint on or about April 23, 2007. The action was removed to this court on May 9, 2007 and issue was joined by the service of the defendant's answer on or about May 14, 2007. (Copies of the pleading as annexed hereto as Exhibit "A")

3. Following the joinder of issue, a Rule 16 conference was held before the Honorable Mark D. Fox at which time leave was granted to file the instant motion.

PLAINTIFF'S ALLEGATIONS

4. The plaintiff's complaint alleges that following causes of action:

- a. Defamation and Slander per se;
- b. Libel per se;
- c. Negligent dissemination of false information while knowing it was false;
- d. Intentional infliction of emotional distress.

5. The gravamen of the complaint is that the plaintiff who was employed by Kohl's as an Assistant Manager at the Shirley, New York store until she resigned on January 12, 2004 was damaged by Kohl's alleged false reporting to the United States Merchandisers Association (USMA) that the plaintiff's had been terminated due to the "Unauthorized taking of merchandise in the amount of \$45.02." Plaintiff further alleges that she was terminated from her employment with Linens-N-Things on February 24, 2006 due to the aforementioned reporting.

THE MOTION TO DISMISS

The defendant seeks a dismissal of the plaintiff's First, Second and Fourth Causes of action pursuant to F.R.C.P 12(b)(1)(6) on the grounds that all three causes of action are time barred.

6. The plaintiff's First, Second and Fourth causes of action allege intentional acts by the defendant. In New York, the general applicable statute of limitations for actions involving acts of defamation is one (1) year. The period runs from the date of the initial publication of the alleged defamatory writing, and not from the date of the publications distribution.

7. C.P.L.R. 215 which provides in pertinent part as follows:

The following actions shall be commenced within one year:

3. an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under.

7. As noted above, the complaint alleges that the cause of action arose at the latest on February 24, 2006 when she was terminated from her employment at Linen-N-Things.

8. Although the date of the initial publication is not stated in the complaint the

plaintiff's attorney as part of his automatic disclosure provided a copy of the USMA Theft Database which shows that the report was made on February 15, 2006. (A copy of the report is annexed hereto as **Exhibit "B"**)

9. It is respectfully submitted that the plaintiff complaint as concerns the First, Second and Fourth causes of action are time barred by the applicable statute of limitations and therefore, they must necessarily be dismissed.

Dated: June 22, 2007

STEVEN F. GOLDSTEIN, L.L.P.

By: 

STEVEN F. GOLDSTEIN (2076)

Attorneys for Defendant

KOHL'S DEPARTMENT STORES, INC.

One Old Country Road, Suite 318

Carle Place, New York 11514

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)


DEBRA BARBINE, being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age, and resides in New York.

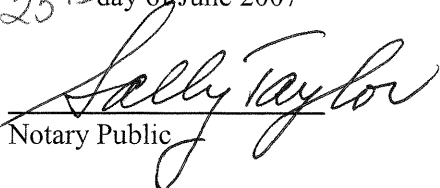
That on the ^{25th} day of June 2007, deponent served the within **NOTICE OF MOTION, AFFIRMATION IN SUPPORT AND MEMORANDUM OF LAW** upon:

TO: JACOBOWITZ & GUBITS, LLP
Attorneys for Plaintiff
158 Orange Avenue, P.O. Box 367
Walden, New York 12586
(845) 778-2121

The addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


DEBRA BARBINE

Sworn to before me this
^{25th} day of June 2007


Notary Public

SALLY TAYLOR
Notary Public, State of New York
No. 01TA6126220
Qualified in Nassau County
Commission Expires May 2, 2009